IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 887 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI HANIF @ DENNY RASULBHAI KALAL - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Applicant(s) : 1,
Mr.P.D.Bhate, APP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 09/09/2005

CAV JUDGMENT

1.By filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner

has prayed for quashing and setting aside the order of externment dated 31.01.2005 passed by Sub-Divisional Magistrate, Mahesana as well as the order dated 23.05.2005 passed by respondent no.1 dismissing the appeal preferred by the petitioner against the order of externment dated 31.01.2005.

2.It appears from the record that the show cause notice dated 06.07.2004 came to be served upon the petitioner by the Sub-Divisional Magistrate, Mahesana under Section 59 of the Bombay Police Act, 1951 (“the Act” for short). It was alleged in the said show cause notice that the petitioner was dangerous person and was indulged in anti-social and illegal activities. It was alleged that on account of terror and fear of the petitioner, none was coming forward to file the complaint or depose against the petitioner. In the said show cause notice, six registered cases have been mentioned against the petitioner. The petitioner filed written reply to the show cause notice on 27.12.2004 and denied all the allegations levelled in the show

cause notice. Ultimately, the order of externment came to be passed against the petitioner on 31.01.2005 by respondent no.2.

3. Being aggrieved by the said order of externment dated 31.01.2005, the petitioner preferred the appeal under Section 60 of the Act before the Additional Secretary, Home Department, Gandhinagar which came to be rejected vide order dated 23.05.2005. Against the aforesaid orders dated 31.01.2005 and 23.05.2005, the present Special Criminal Application is filed by the petitioner under Articles 226 and 227 of the Constitution of India.

4. Heard Mr.H.R.Prajapati, learned advocate appearing for the petitioner and Mr.P.D.Bhate, learned APP for the respondents at length.

5. The impugned order of externment came to be challenged by the petitioner on various grounds. It is mainly contended by the learned advocate appearing for the petitioner that there is a gross delay in passing the impugned externment order. It is submitted that the last offence considered against the petitioner is Prohibition

CR No. 68 of 2003 dated 18.01.2003, whereas the show cause notice was issued on 06.07.2004 i.e., after about 18 months and thus the delay in initiating the proceedings would be against the entire purpose and object of the Act. It is further submitted that the subjective satisfaction recorded by the externing authority externing the petitioner from contiguous districts is not supported by any material. It is, therefore, requested to quash and set aside the impugned order of externment.

6. On the other-hand, Mr.Bhate, learned APP has opposed this petition and has tried to justify the show cause notice and the impugned order. He submitted that the offence registered against the petitioner is considered while passing the order. He submitted that the externing authority has recorded the subjective satisfaction while passing the order, and, therefore, it is requested that this Court may not interfere with the impugned order and dismiss the petition.

7. Upon perusal of the scheme of the Act, it transpires that before passing any order of

externment under Section 56 of the Act, the externing authority is required to issue a notice to the proposed externee under Section 59 of the Act which has to be specific and in detail. At this stage, reference is required to be made to the decision in the case of Jagdish Shamjibhai Makwana V/s Sub-Divisional Magistrate, Bhavnagar, reported in 2002(2) GLR 1158, wherein this court (Coram : H.K.Rathod, J) has observed in para 5 as under :

> “5. I have heard the learned Advocates for the respective parties. In respect to the first contention, looking to the show-cause notice itself and the order of externment, it is clear that the petitioner has been removed from adjoining districts. There is no reason given by the concerned authority as to why the petitioner was required to be removed from adjoining districts, when there was no incident or offence committed by the petitioner in adjoining districts. Therefore, the show-cause notice itself amounts to non-application of mind.

Similarly, in the externment order also, the concerned authority has not discussed these aspects as to why the petitioner has been removed from adjoining districts, and therefore, the order of externment is required to be quashed and set aside."

8. In this view of the matter, it is clear from the perusal of the show cause notice itself and the order of externment that the petitioner has been removed from adjoining districts for which no reasons have been assigned by the authority as to why the petitioner was required to be removed from adjoining districts when there was no incident or offence committed by the petitioner in adjoining districts. It can, therefore, be seen that the show cause notice itself is the result of non-application of mind. Similarly, in the externment order also, the authority has not dealt with this aspect. In this view of the matter, the impugned order of externment deserves to be quashed and set aside on this ground alone.

9. For the reasons stated above, this petition is

allowed. The order of externment dated 31.01.2005 passed by respondent no. 2 and confirmed in Appeal by the Additional Secretary, Home Department, Government of Gujarat vide order dated 23.05.2005 under Section 60 of the said Act are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(Sharad D.Dave,J)

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